



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MTI/170794

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 11, 2015, under Wis. Stat. § 49.85(4), and Wis. Stat. § 227.42, to review a decision by the Dane County Department of Human Services in regard to Medical Assistance, a hearing was held on February 17, 2016, at Madison, Wisconsin.

The issue for determination is whether the Department erred in the issuance of the tax intercept for \$14,231.98.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

I

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]  
Dane County Department of Human Services  
1819 Aberg Avenue  
Suite D  
Madison, WI 53704-6343

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.

2. The Department obtained a judgment on October 8, 2012 in Dane County Circuit Court in favor of the Department for the \$14,231.98 at issue in this matter. That judgment remains valid and enforceable.
3. The Department issued a tax intercept notice to petitioner dated 11/16/12 indicating that his taxes would be intercepted to the amount of \$14,231.98 relating to medical assistance overpayments in claim numbers [REDACTED], [REDACTED], [REDACTED], and [REDACTED].
4. Petitioner filed a request for hearing on December 16, 2015.

### DISCUSSION

This is one of four parallel cases bearing similar facts. The agency alleges that petitioner was part of the household receiving benefits under his wife's name. During the pertinent time period, the agency argues that both Foodshare and BadgerCare benefits were overpaid due to the agency's reliance on falsified income documents provided to the agency. The agency argues that petitioner's income far exceeded the amount that was reported to the agency on numerous employer verification forms. The agency explained that after the agency sought and received income data directly from the employer it calculated the overpayments based on the employer-reported data.

With regard to the tax intercept matters, the request for hearing appears to be untimely. Wis. Stat. § 49.85, provides that the Department shall, at least annually, certify to the Department of Revenue amounts that it has determined that it may recover resulting from overpayments of public assistance, including medical assistance. See also, Wis. Stat. § 49.125; Wis. Stat. § 49.195(3); and, 7 U.S.C. § 2022.

The Department of Workforce Development must notify the person that it intends to certify the overpayment to the Wisconsin Department of Revenue for setoff from his/her state income tax refund, and must inform the person that s/he may appeal the decision by requesting a hearing. Wis. Stat. § 49.85 (4).

Wis. Stat. § 49.85(3)(b) provides that the DWD must give the person whose tax refund is to be intercepted at least 30 days written notice of the impending intercept by sending the required certification notice to his or her last known address. Wis. Stat. § 49.85(3)(b)(2) also requires that the notice issued inform the person subject to the intercept that he or she has *30 days from the date of the notice to appeal the certification action*. Wis. Stat. § 49.85(4)(b), provides for an appeal contesting the certification under Wis. Stat. § 227.44.

The hearing right is described in Wis. Stat. § 49.85(4)(b) as follows:

If a person has requested a hearing under this subsection, the department of workforce development shall hold a contested case hearing under s.227.44, except that the department of workforce development may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.

Wis. Stat. § 49.85(4)(b).

In this case, the Department mailed a state income tax refund intercept notice to the petitioner concerning the MA overpayment claims in November 2012, to him at his last known address of record with the Department. Petitioner testified that he does not believe he received that notice.

The state income tax refund intercept statute requires mailing of the state income tax refund interception notification to the last known-address of the former benefits recipient, and no more. The testimony of the county agency representative is that the address used was the last-known address on record at the time of

the interception notification. The petitioner's appeal was filed more than two years after the State issued the notice.

DHA has a long-standing policy with regard to the filing of an appeal that the pertinent time limit for filing the appeal is tolled where the county agency or the Department cannot demonstrate that a notice of the negative action taken was mailed to the correct address, and the petitioner has not received it. Where it is demonstrated by the evidence that the notice was correctly mailed, this fact creates a rebuttable presumption of delivery that a petitioner must overcome with evidence demonstrating that the notice was not actually received.

This interpretation is confirmed by Wisconsin caselaw.

It is well established that the mailing of a letter creates a presumption that the letter was delivered and received. See, Nack v. State, 189 Wis. 633, 636, 208 N.W. 487(1926), (citing Wigmore, *Evidence* 2d. ed.) § 2153; 1 Wigmore, *Evidence* (2<sup>nd</sup> ed.) § 95) Mullen v. Braatz, 179 Wis. 2d 749, 753, 508 N.W.2d 446(Ct.App.1993); Solberg v. Sec. Of Dept of Health & Human Services, 583 F.Supp. 1095, 1097 (E.D.Wis.1984); Hagner v. United States, 285 U.S. 427, 430, 52. S.Ct. 417, 418(1932).

\*\*\*(Portions of discussion not relevant here omitted).

This evidence raises a rebuttable presumption which merely shifts to the challenging party the burden of presenting credible evidence of non-receipt. United States v. Freeman, 402 F.Supp. 1080, 1082(E.D.Wis.1975). Such a presumption may not, however, be given conclusive effect without violating the due process clause. United States v. Bowen, 414 F.2<sup>nd</sup> 1268, 1273(3d.Cir.1969); Mullen v. Braatz, 179 Wis. 2d at 453. If the defendant denies receipt of the mailing, the presumption is spent and a question of fact is raised. (Examiner note: Citations omitted here.) The issue is then one of credibility for the factfinder. The factfinder may believe the denial of receipt, or the factfinder may disbelieve the denial of receipt.

State ex. Rel. Flores v. State, 183 Wis.2d 587, at 612-3 ((1994). At hearing, petitioner did not rebut the presumption of proper mailing. His argument was that his wife likely intercepted the mail. There is no evidence that any of the notices were ever returned to the Department or the agency as undelivered. Petitioner offered no evidence to support that his wife intercepted his mail. I am not persuaded by petitioner or his mother that he did not receive the 2012 tax intercept notice. This appeal is untimely as the request for hearing was received more than two years after the tax intercept notice.

Furthermore, petitioner's argument as to the merits of the overpayment would not succeed in this forum. The Department previously took the MA overpayment matter to Dane County circuit court and obtained a money judgment against petitioner in the amount of \$14,231.98 filed on October 8, 2012. I have no authority to modify that judgment and it will be in effect and valid until some action by the circuit court or a higher court. The judgement is valid based on the record before me and there is no valid argument that the tax intercept is not valid or properly issued. Petitioner may petition the circuit court if he wishes to argue that he had no notice of the 2012 hearing on the judgment.

### **CONCLUSIONS OF LAW**

1. The appeal is untimely; and,
2. Even if it were not untimely, the circuit court judgment in favor of the Department for the MA overpayments precludes this ALJ's consideration of arguments to the contrary.

**THEREFORE, it is**

**ORDERED**

That this appeal is dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 4th day of March, 2016

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\sJohn P. Tedesco  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on March 4, 2016.

Dane County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability